

1 IN THE CIRCUIT COURT OF OHIO COUNTY
2 STATE OF WEST VIRGINIA
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6 IN RE: TOBACCO LITIGATION : CASE NO. 00-C-6000
7 MEDICAL MONITORING CASES :
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10 * * *

11 DOCUMENT CONFERENCE

12 Wednesday, June 20, 2001

13 VOLUME I
14 * * *

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16 Whereupon the above entitled matter came on for
17 hearing before the Honorable Arthur M. Recht at the
18 Ohio County Courthouse, 1500 Chapline Street, Wheeling,
19 West Virginia, and the proceedings were as follows:
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PLAINTIFF'S
EXHIBIT

tabbies
WV-005951

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EXHIBIT

tabbies
70010.00

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4 IN RE: TOBACCO LITIGATION : CASE NO. 00-C-6000

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11 VOLUME III
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18 Ohio County Courthouse, 1500 Chapline Street, Wheeling,
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1 await further clarification.

2 MS. FORBES: That's fine, Your Honor.

3 MR. BAKER: Thank you.

4 * * *

5 (Document No. 37372 admitted into evidence.)

6 * * *

7 THE COURT: Want a break? Katy wants a
8 break. Not me, I'll go through.

9 * * *

10 (Brief Recess.)

11 * * *

12 THE COURT: Be seated, please.

13 All right. What's next?

14 MS. FORBES: Good news to report the
15 plaintiffs are withdrawing the next one, which is
16 41070, Your Honor.

17 THE COURT: Withdrawn, okay.

18 MR. BAKER: Next, Your Honor, is 42308.

19 THE COURT: Okay.

20 MR. BAKER: Which is a Phillip Morris
21 document, admittedly it deals with ETS, but once again
22 it goes to the issue of lawyers involvement in the
23 research process.

24 MR. THOMAS: Your Honor, your prior rulings

1 in this case, I believe, dictate that this document be
2 excluded. If you look at the very beginning you see
3 who's present John P. Rupp of Covington & Burling,
4 which is an outside law firm. The highlighted portion
5 of the document that is offered to the jury is John
6 Rupp's advice, what John Rupp believes. As such, being
7 outside counsel, offering opinions and recommendations
8 to the client, I believe the Court's prior rulings
9 require that be excluded.

10 THE COURT: Well, if, in fact, it is. If, in
11 fact, it is an opinion. But it's prepared now by a
12 Frederick Dulles, and he's an employee of Phillip
13 Morris.

14 MR. THOMAS: In-house counsel to Phillip
15 Morris.

16 THE COURT: He's in-house counsel, okay. And
17 he's reporting about a meeting in France.

18 MR. THOMAS: In Switzerland, Your Honor.

19 THE COURT: Oh, it's Switzerland?

20 MR. THOMAS: ETS, environmental tobacco
21 smoke.

22 THE COURT: 1987.

23 MR. THOMAS: Correct, Your Honor.

24 THE COURT: Okay. And present -- Mr. Dulles

1 was present, right? And he is really preparing a
2 memorandum relating to that meeting. Isn't that --
3 that's what it looks like to me. And what do we want,
4 meaning Phillip Morris.

5 Now, but the next paragraph you're talking
6 about privileged communication. Is that the one you're
7 talking about?

8 MR. THOMAS: That's correct. That's the
9 highlighted portion to be read to the jury.

10 THE COURT: Okay.

11 MR. THOMAS: That's squarely within it, Your
12 Honor, that's outside counsel giving a recommendation
13 or opinion to his client about litigation matters.

14 MR. BAKER: Just for your information, that
15 was found crime fraud in the state of Washington
16 litigation.

17 THE COURT: It is -- I'd say there would be
18 no privilege whatever with this. If this isn't the
19 rankest example of an attempt to -- a crime fraud
20 exception, I don't know what would be. And I'm going
21 to admit it over the objection of Phillip Morris.

22 42308 will be admitted in evidence, be made
23 part of the record in this proceeding. It actually is
24 a fraud on the Court.

* * *

(Document No. 42308 admitted into evidence.)

* * *

MR. BAKER: Your Honor, the next document is
it 21747 B&W.

MR. WOODSIDE: Your Honor, we have made a
number of objections including environmental tobacco
smoke being irrelevant, and I believe that in
accordance with the Court's ruling this may be admitted
over objection, and we're preserving our objections.

THE COURT: All right. May be done. 21747
be admitted into evidence, made part of the record in
this proceeding, preserving to all the defendants their
objection.

I mean, clearly in regard to any matters on
these documents that make reference to or what's
referred to as environmental smoke, that's not coming
in. I mean, you're still going to -- to the extent
that you want the unhighlighted portions to come in,
you're still going to take a look at that.

MR. BAKER: We'd be happy to.

THE COURT: But clearly those are not coming
in. You follow me?

MR. BAKER: Right. We intend portion the