STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Case Type: Other Civil

THE STATE OF MINNESOTA,

COURT FILE NO. C1-94-8565

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.

MASTER PROPOSAL FOR ADDENDUM TO THE CASE MANAGEMENT ORDER REGARDING FACT DEPOSITIONS

(Disputed and Undisputed Provisions)

NOTE: Items in standard type are agreed-upon provisions. Items in italic type are disputed. References to "P-__" are to plaintiffs' proposals. References to "D-___" are to defendants' proposals.

1. Fact depositions: This order applies only to fact depositions. All issues regarding expert depositions, including whether such depositions shall be permitted, are deferred until the parties' meet-and-confer on expert discovery.

2. Starting Date for Fact Depositions: The parties shall continue to concentrate efforts on the ongoing document production and review process. The parties shall meet and confer to agree upon a date for starting fact depositions. If the parties cannot reach agreement, the issue shall be submitted to the Court.

D-1. 3. Obtaining Documents From Third Parties: Notices of depositions of document custodians of third parties for the purposes of obtaining the production of documents from third parties may be served commencing April 1, 1996. The parties should attempt to obtain agreements from third parties to make documents available for inspection and copying without the necessity of an actual deposition. Such document productions by third parties will be without prejudice to noticing the deposition of the third party's record custodian at a later date, after the document production by the third party and the review by plaintiffs and defendants is complete. In the event any third parties insist on actual record custodian depositions to produce documents, such deposition may proceed.

P-1. 3. Obtaining Documents from Third Parties: No party to this action may obtain documents from a third party through the use of notices of depositions or subpoenas until such party, and its aligned parties (i.e. plaintiffs

jointly or defendants jointly) have completed production and deposit of all documents properly requested in discovery requests made on or before December 31, 1995.

4. Advance Consultation: Absent extraordinary circumstances, counsel shall consult, in advance, with opposing counsel (and third-party deponents, as appropriate) in an effort to schedule depositions at mutually convenient times and places. All parties shall give at least thirty (30) days notice for the taking of any deposition, unless a shorter period of time is agreed to by the parties or ordered by the Court for good cause shown.

5. Examination of Deponents: All depositions shall be noticed and conducted jointly by plaintiffs and defendants, respectively, in accordance with Section III.A of the Case Management Order, unless the parties agree or the Court orders otherwise for good cause shown.

P-2. 6. Limitations on the number of depositions: No party shall be required to produce for deposition more than 15 deponents absent agreement of the parties or order of the Court for good cause shown, with the exception that depositions seeking only information regarding the identity of witnesses; the location, identity, foundation or production of documents, or the corporate structure, organization, and inter-relationships among the parties and affiliates shall not be counted against this limit. Former employees of a party shall be counted against this 15-deposition limit.

P-3. 7. Limitation on third-party depositions: Each side (plaintiffs jointly and defendants jointly) shall depose no more than a total of 15 third-party deponents absent agreement of the parties or order of the Court for good cause shown, with the exception that depositions seeking only information regarding the identity of witnesses; the location, identity, foundation or production of documents, and the corporate structure, organization, and inter-relationships

among the parties and affiliates shall not be counted against this limit. Former employees shall not be counted against this 15-deposition limit. (See ¶ 6, above).

P-4. 8. Medicaid depositions: The limitations of ¶ 7 above shall not apply to the Medicaid depositions taken pursuant to the Court's order of December 21, 1995.

9. One Deposition Rule: Except as otherwise provided by this Order, or by order of the Court for good cause shown, or by agreement of the parties, no person may be deposed in his or her individual capacity more than once in this case. *[P-5: For purposes of this paragraph, good cause shall include, inter alia, the production or discovery of new documents or new information and the taking of a deposition for the sole purpose of establishing the foundation of documents.]*

10. Duration of Depositions: Nothing herein shall prevent a party from requesting that the Court enter a protective order limiting the duration of a deposition or depositions, for good cause shown.

P-6. 11. Objections: The only objections that shall be raised at depositions are those as to (1) a privilege against disclosure, or (2) the form of the question, or (3) the responsiveness of the answer. Objections on any other grounds shall not be allowed, absent agreement of the parties or order of the Court for good cause shown. All objections shall be concise and shall not suggest answers to the deponent. There shall be no speaking objections. Objections as to the form of the question shall be stated by one opposing counsel using the single word, "Objection." Only if the examining attorney asks for a clarification as to the basis of the objection shall any additional words be spoken concerning the basis of the objection. Even then, the basis of the objection shall be stated as succinctly as possible (e.g.

"argumentative" or "ambiguous.") As soon as any one attorney representing a party to this litigation states the word "objection" following a question, then all parties have preserved all possible objections to the form of the question. Counsel for other parties need not repeat their objections in order to preserve them for the record. All objections as to relevance and admissibility shall be preserved for later ruling of the Court.

P-7. 12. Directions Not to Answer: Directions to the deponent not to answer are improper except on the grounds of privilege or to enable a party or deponent to present a motion to the Court for termination of the deposition or protection under Rule 26.03 of the Minnesota Rules of Civil Procedure. When a privilege is claimed, the witness shall nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the communication, to whom and in whose presence the communication was made, and the identity of other persons to whom the contents of the communication have been disclosed.

P-8. 13. Objections to Responsiveness of Answer: Objections to the responsiveness of an answer shall be stated as "objection, nonresponsive" and/or "move to strike." Upon request of the examining attorney, the question shall then be read back to the deponent. All motions to strike shall be preserved for later ruling of the Court.

P-9. 14. Consultation With Counsel: During a deposition, a witness may consult with counsel, but not while a line of questions is pending (except for consultations regarding the assertion of a privilege). If a question is pending, the witness must first answer the question before consulting with counsel (except for consultations regarding the assertion of a privilege).

D-2. 14. Objections, Motions to Strike and Instructions Not to Answer: Except as may otherwise be stipulated amongst counsel, the Minnesota Rules of Civil

Procedure shall govern the matter of all objections, motions to strike and instructions not to answer at depositions. The Court will take appropriate action in the event of abuses by counsel at a deposition, including objections, motions to strike, instructions not to answer and/or unnecessary colloquy which are not asserted or used in good faith, are intended to delay or impede the deposition, or are designed to "coach" a witness during a deposition.

15. Immediate Presentation of Deposition Disputes: If a Special Master is appointed in this litigation, any party may request the presence of a Special Master to attend any deposition. If a dispute arises which the attorneys cannot resolve by agreement and which if not promptly decided will critically disrupt the deposition, a party may submit the matter to the Special Master in the first instance or, if the Special Master is not available, to the Court.

D-3. 16. Predesignation of Deposition Exhibits: In order to make depositions more efficient, a reasonable effort should be made to predesignate deposition exhibits in advance of each deposition. No later than fifteen (15) days before the date of a deposition, the party noticing the deposition shall serve on the opposing party a list of all documents which that party (or any other party aligned with that party) then intends to show the witness, mark as an exhibit at the deposition or otherwise refer to at the deposition. At the same time, the noticing party shall provide the opposing party a copy of any document on said list which has not previously been produced in discovery. Except by order of the Court upon good cause shown, a document which has not been predesignated in accordance with the foregoing procedures may not be shown to the witness at the deposition, may not be marked as an exhibit, and may not otherwise be referred to at the deposition. Notwithstanding the foregoing: (1) in the event the party noticing the deposition in good faith decides after the predesignation date to use or refer to a reasonable number of additional documents, it may designate such additional documents for use at

the deposition no later than two (2) business days prior to the deposition; (ii) the party noticing the deposition may also use at the deposition documents of which the party first becomes aware through testimony at the deposition itself.

17. Marking of Deposition Exhibits: The first time a document is introduced as an exhibit at a deposition, it shall be marked with the deponent's surname and a number. For example, if the deponent's name is "John Smith," the first document used as an exhibit shall be marked "Smith #1." The Bates stamp number of the document shall also be identified for the record. To the extent that a document has already been marked as a deposition exhibit, all counsel shall avoid marking that document with a different exhibit number at subsequent depositions, to the extent feasible. If "Smith #1 is used at "Mary Jones'" deposition, it shall still be referred to as "Smith #1."

D-4. 18. Witness' Right to Have Deposition Completed Without Adjournment: Except by order of the Court upon good cause shown, a deposition not completed within the time initially scheduled for the deposition shall, at the option of the witness, continue from day to day, holidays and weekends excepted, until completed and without deferral or adjournment by reason of any other previously scheduled deposition. If the deposition has not been completed and the witness is not available to continue beyond the time initially scheduled for his or her deposition, counsel responsible for that deposition shall schedule a time for the deposition to continue.

19. Videotaped Depositions: With prior written notice to all parties, and in full compliance with Rule 30.02(d) of the Minnesota Rules of Civil Procedure, any party, at its own cost, may record any deposition by videotaping through a qualified reporting service, in addition to recording by stenographic means, and both the stenographic recording and the videotape recording of such deposition may thereafter be used pursuant to the Minnesota Rules of Civil

Procedure.

Notice of intent to videotape a deposition shall be given no later than fifteen (15) days before commencement of the deposition, absent agreement of the parties or order of the Court for good cause shown.

The following procedures will govern all depositions which are videotaped:

(a) The deposition of any witness which is videotaped shall also be simultaneously stenographically recorded and later transcribed by a court reporter;

(b) The witness shall be first duly sworn on camera by an officer authorized to administer oaths;

(c) The deposition shall be recorded in VHS format on equipment furnished and operated by an impartial technician;

(d) One monitor shall be used so that the picture composition is viewable by counsel;

(e) The video operator shall certify under oath that the proceedings have been recorded accurately and that the videotape accurately reflects such recording;

(f) The original videotape shall be preserved in the custody of the deposition court reporter, together with the original stenographic transcript, in its original condition, until further order of the Court;

(g) It shall be the duty of the court reporter to record when a videotape is changed, when examination by each of the various counsel commences and ends and whenever there is an interruption of the continuous tape exposure for the purposes of off-the-record discussions, mechanical failures, or other similar technical problems;

(h) The original video recording may not be edited or altered. Copies of the video may be edited as appropriate, for example, for trial.

20. Non-English Speaking Deponents: The party noticing the deposition of a non-English speaking deponent shall provide an interpreter for the deposition,

and this interpreter shall be the designated interpreter for that deposition. The party defending the deposition (or, in applicable situations, the plaintiffs or defendants jointly) shall be entitled to one, but no more than one, interpreter at the deposition to serve as a checker. If the checker objects to the interpretation of the designated interpreter, and such objection cannot be resolved by the checker and the designated interpreter off the record, the court reporter shall record on the record both the designated interpreter's translation and the checking interpreter's translation. The colloquy and argument shall not be included in the record by the court reporter; however, a short summary of the dispute may be included by the court reporter if put on the record at a break or at the end of the day's proceedings. During any such off-the-record discussion by the checker and the designated interpreter, the deponent shall be excused from the deposition room upon the request of any counsel. All depositions of non-English speaking deponents shall be recorded by stenographic means, as well as by either videotape or audiotape for purposes, inter alia, of recording the checker's objections.