STATE OF MINNESOTA
COUNTY OF RAMSEY
DISTRICT COURT
SECOND JUDICIAL DISTRICT

THE STATE OF MINNESOTA, By HUBERT H. HUMPHREY, III, Its Attorney General, and BLUE CROSS AND BLUE SHIELD OF MINNESOTA,
Plaintiffs,

v.

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

File No. C1-94-8565

June 16, 1995

PROTECTIVE ORDER

Judge Kenneth J. Fitzpatrick

The above matter came on for hearing before the Honorable Kenneth J. Fitzpatrick on June 8, 1995. Allen M. Katz, on behalf of Defendants Philip Morris Incorporate, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, The American Tobacco Company, Liggett Group Inc., The Council for Tobacco Research -- U.S.A., Inc., and Tobacco Institute (hereafter "Answering Defendants"), presented arguments and authority in support of Answering Defendants' Proposed Order Regarding Dissemination of Documents Produced in Discovery. On behalf of Plaintiff, State of Minnesota and Blue Cross and Blue Shield of Minnesota, Susan Richard Nelson, Esq., presented arguments and authority for Plaintiffs' Proposed Protective Order. On behalf of Defendant B.A.T. Industries, p.l.c., Michael Corrigan, Esq., presented arguments and authority for its Proposed Jurisdictional Discovery Order. Based on the file, arguments, and representations of counsel, it appears that the provisions of this Order are justified and supported by good cause.

IT IS HEREBY ORDERED:

1. Each party to this action shall establish and maintain, until the ultimate resolution of this litigation, a single document production facility (hereafter "Depository") into which it shall deposit all documents it produces in this litigation, unless the parties agree to a different method of production for particular documents or the Court orders a different method of production for particular documents. In the alternative, any two or more parties jointly may establish a single such Depository.

2. Access to any such Depository and any documents, material, or information placed therein shall be limited to counsel for the parties to this action and persons assigned to maintain the Depository. Access, whether via physical, electronic, magnetic, telephone, cellular, digital, computerized, or any other means, to any such Depository by any other persons shall be only by consent of all parties, which consent shall not be unreasonably withheld, or by order of the court. Prior to such access, the provisions of the following paragraphs must be met.

3. No party to this action shall directly or indirectly disseminate any document placed in such a Depository (hereafter such a document and or any reproduction of same, in whole or in part, by electronic, magnetic,, photostatic, computerized, digital, or by any means shall be referred to as a "Depository Document") or allow the viewing of same, with or without physical exchange of a Depository Document, to any attorney representing a party to any other lawsuit except upon the following conditions:

a. Such attorney and party agree in writing that said attorney and party shall not seek to establish a separate depository, warehouse, or other document production facility in such other litigation as long as the established Depository continues to be maintained and remains accessible to such attorney and party;

b. If the Depository Document or any part thereof is deemed confidential, such attorney and party further agree to the additional conditions provided herein for dissemination of confidential material or confidential information, including specifically those contained in paragraph 10 hereof;

c. Such attorney and party shall not further disseminate such Depository

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Document(s) or any portion thereof except as authorized by the party producing he Depository Document or as permitted by this Order or subsequent order of the court; and

d. Such attorney and party acknowledge jurisdiction of this Court to enforce the terms of this Protective Order against them.

Nothing in this Order, however, shall preclude a party in another lawsuit from serving document requests in addition to or different from those served in this action nor preclude a party to this action from seeking appropriate relief from duplicative or abusive discovery requests in such other lawsuit.

4. A party to this action shall, upon dissemination of any Depository Document by any means to any person, maintain a written record as to the identity of the person(s) given a Depository Document and the identity of each Depository Document so disseminated by its document identification ("Bates stamp") number(s). Such record shall be made available to the producing party upon request.

5. Upon a good faith determination by a party that material or information is a trade secret or constitutes confidential, private, or similarly protected information under applicable statutory or common law, a party may designate as "confidential" all or any part of:

a. Answers to interrogatories;

b. Transcripts of depositions of its present and former officers, directors, employees, agents and representatives;

c. Responses to requests for admission;

d Documents produced by it; and

e. Any other discovery or disclosure made in this litigation.

Nothing in this Order, however, creates a presumption or implies that such material or information designated by a party as "confidential" actually constitutes a trade secret or confidential, private, or similarly protected information under applicable law, and such determination may be made at a later time by this Court.

6. The designation of confidentiality for confidential material or information shall be made by placing or affixing on the information in a manner which will not interfere with its legibility the words "CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION." The designation of confidential material shall be made prior to, or contemporaneously with, the production or disclosure of that material, except for depositions. In lieu of placing this label on the original of the information, the party may place the label on the copies of the information that are produced.

7. Confidential material or information which is disclosed in testimony at the deposition of any present or former officer, director, employee, agent, expert, or representative of the parties shall be designated confidential either:

a. By indicating on the record at the deposition; or

b. By indicating by page and line numbers in writing within 30 days after receiving the transcript of any deposition.

8. Any summary, compilation, or copy of any material or information containing confidential information shall be subject to the terms of this Order to the same extent as the material or information from which such summary, compilation, or copy is made.

9. Unless otherwise provided herein, material or information which is deemed to be confidential shall not be used or disclosed by the parties or their counsel or any person acting on their behalf for any purpose whatsoever other than the preparation and trial of this case or any appeal therefrom.

10. No person shall disclose or permit the disclosure of any confidential information to any other person or entity, except in the following circumstances:

a. Disclosure may be made to the Court and its personnel;

b. Disclosure may be made to counsel in this action and staff persons employed by such counsel and to any officer, director, or employee of any party who is providing assistance in connection with this litigation, to the extent necessary to render such assistance; provided that prior to disclosure, each such person must agree to be bound by the terms of this Order

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by executing the Confidentiality Agreement annexed hereto as Exhibit A. The executed Confidentiality Agreements shall be retained by lead counsel for the party seeking access to the confidential materials.

c. Disclosure may be made to persons whose depositions are taken by any party so long as such disclosure is made during the course of the deposition; provided that prior to disclosure, each such deponent must agree to be bound by the terms of this Order by executing the Confidentiality Agreement annexed hereto as Exhibit A. This provision shall not be construed as a waiver of any claim of confidentiality by the parties.

d. Disclosure may be made to consultants, investigators, or experts (collectively hereinafter referred to as "Experts") employed by the parties or their counsel to assist in the preparation and trial of this litigation; provided that prior to disclosure, the Expert must agree to be bound by the terms of this Order by executing the Confidentiality Agreement annexed hereto as Exhibit A. The executed Confidentiality Agreements shall be retained by lead counsel for the party seeking access to the confidential information.

e. Disclosure may be made to any attorney representing a party to any other lawsuit; provided that prior to disclosure, such attorney and party must agree to be bound by all of the provisions of this Order by executing, filing, and serving an Affidavit of Compliance with this Court, in the form attached hereto as Exhibit B. Such attorney and party shall thereafter be bound by all of the provisions of this Order and shall be able to permit disclosure of confidential information only in accordance with all of the provisions in this Order. Such attorney and party shall not use any confidential information in any depositions in the other lawsuit, in any papers to be filed in the court in which the other lawsuit is pending, or in any other proceedings in the court in which the other lawsuit is pending unless the court in which the other lawsuit is pending has entered a protective order substantially similar to this Order. Said protective order shall provide that the court in which the other lawsuit is pending shall determine (i) how confidential information shall be handled at any trial of such other lawsuit, and (ii) how confidential information in the possession of the parties to such other lawsuit (and their counsel, experts and any other persons who acquired possession in the course of such other lawsuit) shall be handled at the conclusion of such other lawsuit.

f. Disclosure may be made to any governmental agency or law enforcement agency, including but not limited to The Centers for Disease Control and Prevention ("CDC"); the Food and Drug Administration ("FDA"); the Federal Trade Commission ("FTC"), and state agencies, including attorneys general; provided that prior to disclosure, an appropriate representative of the agency must agree to be bound by all of the provisions of this Order by executing, filing, and serving an Affidavit of Compliance with this Court, in the form attached hereto as Exhibit C. Moreover, prior to such disclosure, the party who intends to make the disclosure hereunder shall provide the producing party 30 days notice of such intended disclosure. In the event the enforceability of the Affidavit of Compliance is challenged under applicable law, before the Court, disclosure will be prohibited pending the resolution of the matter before the Court. Upon disclosure, such agencies shall thereafter be bound by all of the provisions of this Order and shall be able to permit disclosure of confidential information only in accordance with all of the provisions of this Order.

11. Each law firm of record in this action shall, upon dissemination of any confidential information to any person outside the law firm, maintain a written record as to the identity of the person(s) given confidential information and the identity of the confidential information so disseminated by its document identification ("Bates stamp") number(s). Such record shall be made available to the producing party upon request. Each person or entity that executes a Confidentiality Agreement or Affidavit of Compliance outside the law firms of record in this

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litigation shall also comply with these record keeping provisions.

12. If any party believes that any information which is claimed to be confidential does not contain confidential material, it may, at any time, contest the applicability of this Protective Order to such information by notifying the opposing party's counsel in writing and identifying the information contested. The parties shall have thirty (30) days after such notice to meet and confer and attempt to resolve the issue. If the dispute is not resolved within said period, the party seeking the protection shall have thirty (30) days in which to make a motion that is subject to a dispute as to whether it is in fact confidential, shall, until further order of the Court, be treated as confidential in accordance with the provisions of this Order.

13. Inadvertent failure to designate any information "confidential" pursuant to this Order shall not constitute a waiver of any otherwise valid claim of confidentiality pursuant to this Order, so long as a claim of confidentiality is asserted within fifteen (15) days after discovery of the inadvertent failure. At such time, arrangements shall be made by the parties to label the information "confidential" in accordance with this Order.

14. To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, or any other papers filed or to be filed with the Court reveal the contents of any confidential information, these papers or any portion thereof shall be filed under seal with the Clerk of Court in an envelope marked "SEALED;" provided, however, that the parties expressly reserve the right to move to amend this provision of the Order, requesting the Court to remove information from under seal which form the basis for a motion brought in this case, if the public interest so requires. The cover page of the filed document shall be marked: "Confidential -- Subject to Minnesota Protective Order."

15. The Clerk of this Court is directed to maintain under seal all information, documents, and transcripts of deposition testimony filed in this litigation which have been designated as "confidential" pursuant to the terms of this Order. To the extent confidential information is redacted from such a filing, the Clerk shall file the redacted version in the public file.

16. Nothing herein shall affect the right of any party to seek additional protection against the disclosure of any information, documents, or materials of a highly sensitive nature. The parties shall meet and confer to negotiate additional protection for any such information. Any remaining dispute concerning such additional provisions shall be submitted to the Court for resolution.

17. Nothing in this Order shall be deemed to restrict in any manner the use by any party of its own documents, information, or materials.

18. A copy of this Order shall be served with any subpoena compelling the production of documents from any third party.

19. Nothing herein shall create a presumption or imply that a party is entitled to the production of documents or materials by virtue of the existence of this Order.

20. If another court or administrative agency subpoenas or orders production of confidential information that a party has obtained under the terms of this Order, such party shall promptly notify the party designating the information as confidential of the pendency of the subpoena or order and shall not produce the confidential material until the designating party has had reasonable time to object or otherwise take appropriate steps to protect the confidential information.

21. Any party may designate as "trade secret information," any documents, in whole or in part, if such documents, in that party's good-faith determination, constitute or contain a "trade secret" as defined in Minn. Stat. § 13.37(b). To the extent that such documents are produced to the State of Minnesota, the State shall treat such documents as "nonpublic data" for purposes of the Minnesota Government Data Practices Act. The State may challenge any designation of documents as "trade secret information," pursuant to paragraph 12 of this Order but pending the Court' ruling, the State shall continue to treat the document as nonpublic data. The State shall notify Defendants of any challenge made by any third person to the status of any document, or portion of any document, as "trade secret information," and advise the Defendants that it is their responsibility to defend such designation in Court against such challenge. The State shall not change such designation or classification or release any such document without approval of this Court.

22. To the extent that documents designated as confidential are produced to the State of Minnesota, the State shall treat such documents as "confidential" under this Order. In the event there is a request under the Minnesota Government Data Practice Act for such documents, the State shall notify

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defendants of such request made by any third person and advise that third person in the event that the defendants challenge the dissemination of such documents to that third person. In the event there is a challenge to the dissemination of such documents, the State will advise the defendants that it is their responsibility to defend such confidential designation in Court against such request. The State will remain neutral and shall not release any such document in the event of such a challenge without approval of the court.

23. All Confidentiality Agreements and Affidavits of Compliance which are executed during the course of this litigation shall be exchanged among the parties at the conclusion of the litigation except by Order of this Court for good cause shown.

24. After the conclusion of this action, the provisions of this Order shall continue to be binding until further order of this Court and this Court shall retain jurisdiction over the parties and any other person who has access to documents and information produced pursuant to this Order for the sole purpose of enforcement of its provisions.

25. When any attorney of record in this action or any attorney who has filed an Affidavit of Compliance becomes aware of any violation of this Order, or of facts constituting good cause to believe that a violation of this Order may have occurred, such attorney shall report that there may have been a violation of this Order to the Court and/or opposing counsel.

26. This Order may be modified by the Court *sua sponte* or upon motion of the parties for good cause shown. The Court will enter a subsequent order addressing the use of confidential materials at trial or at the conclusion of this case as to any party. Pending entry of that Order, this Order shall control the use of documents in this case.

27. The special protections sought by B.A.T. Industries p.l.c. are denied. The provisions of this Order shall apply to B.A.T. Industries as well as all other parties to this action. All documents produced by B.A.T. Industries, whether discovery is limited to jurisdictional issues or if and when discovery is expanded beyond such limited, are subject to this Protective Order. However, if either plaintiffs or B.A.T. Industries believe that entry of this Order has raised any unique issues requiring adjudication, their counsel shall meet and confer within thirty (30) days after entry of this Order to identify and attempt to resolve such unique issues. If any dispute cannot be resolved within this period, B.A.T. Industries shall have twenty (20) days within which to make appropriate application to the Court.

Judge Kenneth J. Fitzpatrick

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