STATE OF MINNESOTA **SECOND JUDICIAL DISTRICT**

COUNTY OF RAMSEY **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.

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTIONS
TO COMPEL DISCOVERY AND FOR A PROTECTIVE ORDER
TO BE HEARD OCTOBER 8TH, 1996

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INTRODUCTION

Plaintiffs respectfully submit this memorandum in response to the three separate memoranda submitted by defendants on the following issues to be heard on October 8:

- **Document destruction**: Instead of facing the merits of this most serious issue, defendants request that this Court merely direct a further meet-and-confer. However, the parties held an extensive meet-and-confer on this issue, after which defendants failed to propose any compromise. Moreover, at this late date, the parties remain in substantial disagreement over the scope of this discovery. Defendants also engage in disingenuous contortions in an attempt to escape the obvious implications of their own documents. However, evidence continues to mount -- in addition to that previously cited -- of defendants' singular preoccupation with destroying damaging materials.

- **Industry agreements relating to, inter alia, product standards**: This issue has its genesis in a simple letter plaintiffs sent to defendants seeking confirmation that documents relating to, inter alia, product standards would be produced pursuant to existing documents requests. After two months of frustrated attempts to resolve the issue, defendants insist that plaintiffs serve yet another document request, to start the whole process all over again, for documents which are clearly relevant to many of the issues in this case, including conspiracy, antitrust, and the health hazards of cigarettes.

- **The Minnesota Government Data Practices Act**: In their response, defendants repeatedly confirm that they seek carte blanche discovery in this litigation, without any controls established by this Court. Defendants also ignore the State of Minnesota's proposed relief, which allows defendants unfettered access to documents pursuant to data practices requests but merely restricts the subsequent use of such documents, in accordance with the procedures established for other documents in this case. The only Minnesota authority defendants cite on this issue -- of access versus use under the data practices act -- directly supports the State's position in this motion.

Finally, there is one common theme which runs through defendants'

responses to every motion brought by plaintiffs for this hearing, that is, defendants' contention -- in what has become their mantra for this litigation -- that it is too early to decide these issues on the merits. Defendants contend that the document destruction motion is premature because the parties should meet-and-confer, again; that the product standards motion is premature because plaintiffs should file another document request; that the data practices motion is premature because the State should wait to file a motion in limine (and, in an issue briefed separately, that the privilege log motion is premature because plaintiffs should wait to file a motion to compel). Plaintiffs respectfully suggest that any delay in the resolution of these discovery issues, two years into this litigation, would unnecessarily impede the progress of this case.

I. DOCUMENT DESTRUCTION

A. Introduction

In an attempt to avoid the merits of this issue, defendants engage in extended arguments that this Court should defer to a further meet-and-confer. In fact, however, there already has been extended opportunity for meet-and-confers, throughout which defendants refused to propose any compromise. Moreover, contrary to defendants' contentions, a vast gulf continues to separate the parties.

Given the substance of what is at issue -- serious evidence of document destruction by the defendants -- it is understandable why defendants wish to avoid the day of reckoning. In their response, defendants feebly attempt to explain away the clear, unmistakable, and repeated references to document destruction from their own files. In addition, the extensive evidence cited in plaintiffs' initial memorandum is only the beginning -- not the end -- of the mounting record of document destruction in this case. For example, a document recently produced by R.J. Reynolds Tobacco Company ("RJR") discusses destruction of controversial Joe Camel marketing materials to avoid "scrutiny."

B. The Meet and Confer Process

After the service of the interrogatories at issue, defendants' objections, and a detailed letter from plaintiffs setting forth the deficiencies, the parties agreed to discuss the issue of document destruction at the August 13 meet-and-confer. The discussion of this issue covers 34 pages of that transcript. Exhibit 5 to the Affidavit of Corey L. Gordon in Support of Plaintiffs' Motion dated September 16, 1996 (herein "Gordon Aff. I"). In the end, defendants specifically stated that they would get back to plaintiffs with a proposed resolution, and, if that failed, the parties agreed to present this issue to the Court at this hearing.[1]

Despite their promises, defendants never submitted a proposal. Instead, two weeks after the meet-and-confer, defendants -- who claim in their memorandum that plaintiffs' discovery is "obviously overbroad" -- served virtually the same document destruction discovery on plaintiffs. See Exhibit A to Affidavit of Corey L. Gordon dated October 4, 1996 submitted herewith (herein "Gordon Aff. II")[2]

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[1] The parties stated at the meet-and-confer:

> Mr. Silfen [defense counsel]: I think you have dispelled our paranoia very definitely, and I think we can, I think we ought to caucus and make sure we're all hearing the same thing, but I think we're going to be able to do it.
>
> . . .
>
> So maybe we should talk about what we're all hearing here and try to write something that we think responds to what you're saying.
>
> Mr. Ciresi [plaintiffs' counsel]: Why don't you do that. . . .
>
> Ms. Walburn [plaintiffs' counsel]: Why don't we agree on a schedule for a hearing on this in the event that we can't get it resolved? And we would suggest either putting it on the schedule for the September hearing or approaching the Court for an October hearing date.
>
> Mr. Silfen: September is getting crowded.
>
> Ms. Walburn: Well, then we can move to October.
>
> Mr. Silfen: Fine.

Id. at 207-209.

[2] In response, plaintiffs have agreed to conduct the same inquiry plaintiffs seek to have this Court compel the defendants to undertake pursuant to this motion. Id.

C. Defendants' Proposed Modified Order

Defendants contend that plaintiffs' proposal is acceptable "with limited changes." The "limited changes," however, eviscerate the entire point of the discovery.[3]

• **"Readily" available "document" indices**: Defendants propose to limit their search to "readily" available "document" indices. Defendants do not attempt to define what they mean by "readily" available, but this term does suggest, to say the least, a rather loose standard.

Defendants also urge that their search be limited to "document" indices, but do not explain what type of indices such a limitation would exclude or why such a limitation would be appropriate. Obviously, indices not styled as "document" indices could, nevertheless, have comments or references regarding document destruction. [4]

In addition, defendants have excluded from their proposal the requirement to search "lists," despite the evidence which already specifically points to the fact that at least certain defendants maintained lists of destroyed materials. See, e.g., Exhibits 11, 12 and 13 to Gordon Aff. I.

• **Written policies on destruction**: Defendants propose to evade this discovery by exempting documents destroyed "consistent with written document retention and destruction policies." However, it appears that a significant number of smoking and health documents destroyed by the defendants may have been, in fact, destroyed pursuant to "written policies."

Moreover, documents destroyed pursuant to written policies may well be, for some defendants, among the easiest to identify. For example, a document

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[3] The present motion encompasses all defendants, notwithstanding the efforts of the Council For Tobacco Research ("CTR") to extricate itself. See Defendants' Opposition to Motion to Compel Re Document Destruction ("Defendants' Opposition"), at p. 2, n. 1. CTR's answer to plaintiffs' interrogatories acknowledged that documents had been destroyed, but failed to provide the specific information requested in the interrogatory on those instances of destruction. Exhibit 1 to Gordon Aff. I.

[4] Defendants also reference "outdated databases that might be technologically difficult or impossible to search." Defendants' Opposition, at p. 7. After more than 1-1/2 years spent on the issue of indices in this litigation, plaintiffs are surprised --and concerned -- that further indices or databases still remain undisclosed.

recently produced by RJR demonstrates that RJR has certain detailed records of the titles and authors of documents apparently destroyed pursuant to written policies. Exhibit B to Gordon Aff. II. This document summarizes the 1963 Research Department Memoranda "destroyed," listing such titles as:

> The Smoking and Health Problem -- A Critical and Objective Appraisal;
>
> Radioactivity of Tobacco . . . . A Study of Burley Tobacco;
>
> The Analysis of Cigarette Smoke Condensate. . . . Polycyclic Hydrocarbons in Lark Cigarette Smoke; and
>
> Counteracting Tobacco Additives.

Id. Since RJR has access to information related to these documents, and access to many of the authors, RJR is in the best position to review its own records and answer plaintiffs' interrogatories with substantive responses.

• **Persons who must be inquired of:** Defendants attempt to limit their inquiry to persons "who might reasonably be expected to have new or additional responsive information." As with the notion of what might be "readily available," persons who might "reasonably be expected" to have additional responsive knowledge is a highly subjective standard.

In addition, defendants seek to limit the inquiry to "current" in-house and outside counsel. Plaintiffs' proposed order would not obligate defendants to identify and track down every single lawyer who ever represented the defendants, but instead only attorneys past and present involved in smoking and health litigation.

• **Documents not "retained" by defendants**: Defendants object to including the issue of documents not "retained." However, whether a document was destroyed or purposefully shielded by a third party, the result may be the same: the document may be eliminated from production. Defendants' own documents already point to this practice. Indeed, it was the recent production of these documents, cited in plaintiffs' initial memorandum, that led to plaintiffs first notifying defendants, in prior correspondence, that this would be encompassed in the document destruction issue.[5]

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[5] Plaintiffs have been attempting to crack these related issues for more than 15 months. Plaintiffs' first set of interrogatories, served in June

D. Evidence of Destruction

In support of this motion, plaintiffs provided to the Court numerous documents from the defendants' own files evidencing a disturbing pattern of document destruction. This demonstrates both the substantial basis for plaintiffs' concerns and the resources available to defendants for obtaining responsive information.

In response, defendants go great lengths to distort the content of the documents, explanations which simply fly in the face of the clear and explicit language of the documents themselves. Moreover, the documents presented in plaintiffs' initial memorandum are not the only evidence of document destruction uncovered to date.

1. Philip Morris

Philip Morris Incorporated ("Philip Morris") discusses at length its contention that it has produced more than half a million pages of documents from INBIFO, its research facility in Germany. However, the production of certain INBIFO documents misses the point: the issue is not what has been produced, but what has been destroyed.[6]

Indeed, the documents attached to plaintiffs' initial motion evidence the destruction of crucial research documents. The handwritten notes of Philip Morris Research Director Thomas Osdene, for example, chronicle a system to exchange sensitive research material between Philip Morris and INBIFO, and to "destroy" -- Osdene's words -- the documents. Exhibit 7 to Gordon Aff. I. It is these destroyed documents to which plaintiffs' discovery is directed, not the reams of marginally relevant documents that Philip Morris has produced thus far.

Similarly, Philip Morris congratulates itself for producing the William

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1995, requested information on document transfers. Exhibit C to Gordon Aff. II. The recently disclosed documents indicate that perhaps the word "transfer" was not, in defendants' view, the proper terminology. Now defendants claim that "destruction" does not adequately describe this practice either. Clearly, there should be no need to endlessly engage in this game of semantics.

[6] The vast majority of the INBIFO documents produced to date are marginally relevant documents, not the type of long-term cancer and addiction research that Philip Morris is suspected of having conducted through INBIFO.

Dunn memo evidencing an intent to "bury" unfavorable results of research on nicotine addiction and a copy of the research proposal itself. The proposal, however, is not what Dunn suggests would be buried but, rather, the results of the research. Exhibit 10 to Gordon Aff. I.

In fact, it now appears that the results were either not summarized in the standard Philip Morris research report format, or the research report itself was destroyed. In response to plaintiffs' recent inquiries, Philip Morris acknowledged that it had not produced any such results, but would produce the lab notebooks containing the raw data from the study itself. Defendants' Opposition, at p. 10, n. 6. Evidently, the results were indeed "buried." [7]

Moreover, another Philip Morris document -- not cited in plaintiffs' initial memorandum -- also indicates that document destruction was an ever-present thought among Philip Morris scientists. Thus, this handwritten memo, dated February 23, 1982, from J. L. Charles, a senior Philip Morris research and development scientist, to Research Director Osdene, states at the outset:

> You may shred this document, have it typed as is, incorporate the suggestions in a position paper for upper management, or use the document in any way you see fit.

Exhibit D to Gordon Aff. II, at 1003171563 (emphasis added).

This is not an ordinary or insignificant memo. The memo states:

> The comments below are those of a concerned employee with a 20-year association with PM R&D, of which the past 10 years have been directly involved with smoking and health related research.
>
> . . .
>
> This company is in trouble. The cigarette industry is in trouble.
>
> . . .
>
> Let's face the facts:
>
> 1. Cigarette smoke is biologically active.
>
> a. Nicotine is a potent pharmacological agent. . . .
>
> . . .
>
> d. Oxides of nitrogen are important in nitrosamine

[7] By agreement, Philip Morris has not been producing lab notebooks and other raw data of research studies. Until this evidence of destruction came to light, however, plaintiffs believed that it was Philip Morris' practice to summarize the results of its studies. Apparently, where the results of research are unfavorable, Philip Morris either did not prepare a report, or unfavorable reports were destroyed. This is precisely the type of information sought by plaintiffs' document destruction interrogatories.

formation. Nitrosamines as a class are potent carcinogens.

e. Tobacco-specific nonvolatile nitrosamines are present in significant amounts in cigarette smoke.

. . .

i. We do not know enough about the biological activity of additives which have been in use for a number of years.

Id., at 1003171563-64, 66-67.

Strangely, the document appears to end mid-stream, with the listing of point number 1, above, but no point number 2 or any conclusion. In addition, although the memo states at the outset that it will provide "suggestions as to how to approach the solution to some of the problems," id. at 1003171563-64, no such suggestions or solutions are to be found in the copy produced in this litigation. In response to plaintiffs' inquiries, Philip Morris has stated that this copy is all it can find. Exhibit E to Gordon Aff. II.

2. RJR

RJR urges the Court to disregard the obvious implications of the titles of the index entries cited by plaintiffs by arguing that, at some point in the future, it will show that "many of those documents are not what plaintiffs claim them to be." Defendants' Opposition, at p. 10. If, in fact, there has been no document destruction, RJR can clear the record by answering the interrogatories at issue.

However, the evidence of destruction continues to mount. In fact, evidence produced by RJR demonstrates that its tentacles of document destruction reached to its advertising agencies. For example, one newly-produced document from a vice president at Young & Rubicam, an advertising agency in New York, to a senior manager at RJR, describes numerous documents related to the "Joe Camel" campaign that "will be destroyed." Exhibit F to Gordon Aff. II. Inexplicably, RJR has redacted the copy of the memo produced in this litigation for "privileged material." Id. The redactions appear to include the titles of certain documents listed for destruction. Id. [8]

[8] Plaintiffs are unaware of the existence of a privilege shielding the identity of destroyed information or an advertising agency-client privilege under Minnesota law.

A handwritten note attached to this memo leaves little doubt about the motive for the proposed destruction of these Joe Camel documents:

> Ned - As we discussed . . . This is what I'm going to destroy - none of this material is required to do future work - Also, under our current scrutiny, a wise move to rid ourselves of developmental work!!

Id. (emphasis added). The "current scrutiny," of course, arose amid the growing controversy surrounding the astounding success of the Joe Camel marketing campaign in attracting children as smokers.

3. Brown & Williamson

Brown & Williamson Tobacco Company ("Brown & Williamson") acknowledges that numerous documents were destroyed pursuant to document destruction policies and that the destructions were "carefully recorded, and that record preserved . . . ." Defendants' Opposition, at p. 12. Therefore, it should be a simple matter for Brown & Williamson to review those records and obtain responsive information regarding documents relating to smoking and health and marketing.

II. INDUSTRY AGREEMENTS RELATING TO PRODUCT STANDARDS

In what can only be described as a 20-page avalanche of verbiage, defendants demonstrate the impossibility of resolving discovery disputes through "genuine 'give and take' discussions to address the parties' concerns." Defendants' Memorandum in Opposition to Plaintiffs' Motion to Compel Discovery Concerning Product Standards, Etc. ("Defendants' Memorandum"), at p. 3.

Plaintiffs' initial request was simple and straightforward: Please tell us if you agree that our existing discovery requests encompass the production of product standards exchanged between or among defendants and documents relating to patents on smoking and health shared between or among one or more defendants. Exhibit 14, Gordon Aff. I. Now, after two months of delay -- and repeated correspondence -- it is defendants' position that plaintiffs should start again at square one, with the service of new document requests.

As set forth in plaintiffs' initial memorandum, a number of existing

document requests encompass the documents at issue in this motion. As this Court is aware, plaintiffs served a comprehensive set of document discovery requests in June 1995. Defendants objected to virtually all requests on a litany of grounds, none the least of which was the oft-repeated refrain that the requests were overly broad, vague, and lacked specificity. The past year has been spent in an attempt at refining and clarifying the requests, often through letters such as the one which generated the current motion.

Defendants' proposal is to now have plaintiffs start all over again, serve new discovery requests to which numerous objections can be interposed, another lengthy meet-and-confer process can be undertaken, and the final time for production delayed. This is an unnecessary waste of time. Accordingly, plaintiffs urge the Court to grant plaintiffs' motion to compel.[9]

III. THE MINNESOTA GOVERNMENT DATA PRACTICES ACT

In their memorandum, defendants merely confirm the necessity for the State of Minnesota's proposed protective order. Repeatedly, defendants verify that they seek carte blanche to conduct discovery in this litigation, completely apart from the auspices and authority of this Court.

Given defendants' position, and the three recent data practices requests served by defendants specifically designed to circumvent the discovery rules in this case, the State has proposed a protective order which merely seeks to govern the use of these documents in this litigation. The State's proposed protective order does not restrict defendants' access to any documents sought under the data practices act. Instead, the State proposes only that the use of documents obtained through data practices request be treated in the same manner in this litigation as all other documents. Remarkably, defendants' term these proposed procedures, in which they would be held to the same

[9] Defendants contend that plaintiffs' request for product standards documents would encompass such things as "the size of cigarettes, the size of packaging, and so on." Defendants' Memorandum, at p. 7. Yet, defendants have swamped the depository with reams of documents relating to product standards established by CORESTA, an international organization which sets routine standards for cigarettes. It is only when plaintiffs seek to ensure that more probative product standards -- relating to smoking and health -- are produced that defendants raise objections.

standard as plaintiffs in this litigation, as "unnecessary," "burdensome," and "overreaching."[10]

In their memorandum, defendants' long discussion of access pursuant to the data practices act misses the point of the present motion. The State does not seek to restrict defendants' access to documents under the data practices act. Instead, the State merely seeks to allow this Court to exercise the same authority over the use of these documents in this litigation as the Court exercises with respect to other documents in this case. Clearly, this falls within this Court's authority to manage litigation before it. See, e.g., Rule 16, Minn.R.Civ.P.

In fact, defendants' memorandum contains only one citation to Minnesota authority on the use of documents obtained through the data practices act. See Defendants' Memorandum, at pp. 5-6, citing Op. Atty Gen. No. 852 (Dec. 4, 1995). Defendants erroneously state that, "As the same Attorney General who is named a plaintiff in this action explained in an opinion just last year, the Act does not restrict the requestor's use of the documents obtained." Defendants' Memorandum, at p. 5. Contrary to defendants' representations, however, the cited opinion specifically holds that subsequent use -- as opposed to access -- may be restricted. (A copy of this opinion, which was not provided by defendants, is attached hereto as Exhibit G to Gordon Aff. II). In this opinion, the Attorney General stated:

> Our basic conclusion is that, although the Minnesota Government Data Practices Act. . . generally does not permit state agencies to withhold access to "public" government data, it does not follow that the MGDPA prohibits state agencies from placing reasonable restrictions on the use of their "original works of authorship," consistent with the rights of a copyright owner under the Federal Copyright Act ("FCA").
>
> . . .
>
> [A]llowing state agencies to assert the state's intellectual property rights would not limit the right of the public to access and copy public data; the only potential limits would be on subsequent use of some of that data.

[10] Defendants' complain that they "learned of plaintiffs' intent to bring this matter to the Court for the first time at the August 13 meet-and-confer session." Defendants' Memorandum Regarding the Minnesota Government Data Practices Act ("Defendants' Memorandum"), at n. 16. That, of course, was two months ago.

Id., at 2, 5 (emphasis added).[11]

Indeed, even the quotation from this opinion cited by defendants states that the data practices act "does not govern subsequent use." Defendants' Memorandum, at p. 5. Thus, in the present case, this Court clearly retains the ultimate authority to control the use of these documents -- and all documents -- in this litigation.

Moreover, the State's proposed order is not, as defendants allege, based upon "innuendo and unsupported allegations." Defendants' Memorandum, at p. 1. The proposed order is based upon three specific data practices requests served by defendants in the last two months. Each of these requests either (1) specifically circumvents agreements reached by the parties during the now more than year-long meet-and-confer process, and/or (2) seeks documents to which the State raised unresolved objections to producing pursuant to document requests. Instead of filing motions to compel, or seeking new agreements in meet-and-confers, defendants simply served data practices requests.[12]

Finally, in an effort to divert attention, defendants propose an "alternative" order based upon their allegations -- without one scintilla of evidence -- that plaintiffs have "interfered" with the production of documents pursuant to the data practices act. The only "evidence" defendants cite is (1) a letter from plaintiffs' counsel to defense counsel seeking information on a data practices request and seeking to institute certain procedures to which defense counsel subsequently agreed, and (2) letters which indicate that plaintiffs' counsel is being copied and consulted on this matter, which, of

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[11] Thus, the Attorney General found that the Department of Natural Resources ("DNR") could restrict the publication "or otherwise use" of the data practices information "for purposes other than personal ones" unless a license was obtained from the State pursuant to the Federal Copyright Act. Id., at 1. Similarly, in the present case, the State's proposal is to provide defendants access to documents but restrict the use in the same manner as other documents in this case pursuant to, inter alia, the Minnesota Rules of Civil Procedure.

[12] Defendants complain that plaintiffs failed to cite "any correspondence, transcript or other record" relating to the agreement of the parties to limit certain discovery but then, in the next paragraph, confirm the agreements. Defendants' Memorandum, at pp. 17-18. With respect to the overlapping nature of the data practices requests and document requests, see Exhibit H to Gordon Aff. II.

course, is not only to be expected in this or any litigation but is expressly contemplated in the previous orders of this Court. See Exhibits 17, 18, and 19 to Affidavit of Jonathan Redgrave in Support of Defendants' Memorandum ("Redgrave Aff.").[13]

Not only do defendants' accusations lack any foundation, plaintiffs have specifically informed defense counsel in writing on three different occasions that "the State of Minnesota is responding to requests under the Minnesota Government Data Practices Act in an appropriate fashion and pursuant to law;" that we are "unaware of any delays in the delivery or production of documents," and, finally, that "I thought that I had clearly stated that I am not aware of any delay in the production of any requested documents to any law firm involved in the tobacco litigation." Exhibit 17 to Redgrave Aff.

In sum, the State merely seeks to impose some semblance of Court control over the use of documents in this litigation. In view of the inherent authority of this Court, the powers conferred on this Court by the Minnesota Rules of Civil Procedure, and the universal recognition of the necessity of courts to manage and control litigation, defendants' vociferous objections to any court supervision of their conduct in this aspect of the case is simply untenable. See Manual for Complex Litigation Third, Federal Judicial Center (1995), at xiii ("judicial control through effective management techniques and practices is now considered imperative").[14]

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[13] Defendants' memorandum points to the language of two letters which state, "All communications regarding data practices should be made to Ms. Nelson [plaintiffs' counsel]." Defendants' Memorandum, at p. 30; Exhibit 19 to Redgrave Aff. Similarly, another letter cited by defendants contains the notation, "if contacted by them [defendants] say we are represented by counsel." Exhibit 18 to Redgrave Aff. Defendants' attempts to implicate these letters with nefarious connotations is, indeed, far-fetched; certainly, the State of Minnesota is entitled to the representation of counsel.

[14] Defendants' latest attempt at an end-run around this Court's authority is a sweeping subpoena served last week on the National Association of Insurance Commissioners issued in response to defendants' ex parte motion in a state court in Missouri, home of Shook, Hardy & Bacon ("SHB"), one of the national law firms appearing in the Minnesota action which has represented the tobacco industry for decades. Exhibit I to Gordon Aff. II. This subpoena, issued on a non-party, seeks documents which extend far beyond the contours of the discovery in this case, for example, "all documents that evidence or refer to the accuracy of information and/or data received from Blue Cross and Blue Shield of Minnesota or any Blue Cross or Blue Shield organization. . . ." Id.

IV. CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully request that this Court grant plaintiffs two motions to compel and grant the State of Minnesota's motion for a protective order.

Dated this 4th day of October, 1996.

ROBINS, KAPLAN, MILLER & CIRESI

By: /s/ Corey L. Gordon
Michael V. Ciresi (#16949)
Roberta B. Walburn (#152195)
Corey L. Gordon (#125726)

2800 LaSalle Plaza
800 LaSalle Avenue South
Minneapolis, Minnesota 55402-2015
(612) 349-8500

SPECIAL ATTORNEYS FOR THE STATE OF MINNESOTA
AND
COUNSEL FOR BLUE CROSS AND BLUE SHIELD OF MINNESOTA