STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

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.,
British-American Tobacco Company Limited,
BAT (U.K. & Export) Limited,
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.

Court File No. C1-94-8565

December 30, 1997

ORDER IMPOSING SANCTIONS UPON THE AMERICAN TOBACCO COMPANY AND BROWN & WILLIAMSON TOBACCO CORPORATION AS SUCCESSOR BY MERGER TO THE AMERICAN TOBACCO COMPANY

Plaintiffs' request for sanctions against The American Tobacco Company ("American") and Brown & Williamson Tobacco Corporation as successor by merger to The American Tobacco Company ("B&W") came on for hearing on December 9, 1997, before the Honorable Kenneth J. Fitzpatrick.

Incorporating the findings of record to date, expressly including but not limited to the findings set forth in the Orders of this Court filed May 8, 1997, and June 18, 1997, the Court makes the following ORDER

based upon the record, arguments of counsel, and supplemental filings made by the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

WHEREAS, in light of almost 100 years of cigarette manufacture and sale by American and its affiliates,
American's substantive document production and responses to discovery in this case are minuscule and
incomplete;

WHEREAS, American has evolved through a number of corporate reorganizations, some pre-complaint and
some, more tellingly, post-complaint, and is now related as parent/subsidiary or sister subsidiary to Fortune
Brands, Inc., formerly American Brands, Inc., Gallaher Limited of the U.K., and B&W, successor by merger to
American;

WHEREAS, on May 8, 1997, the Court filed its Order Granting Plaintiffs' Motion to Compel Relating to
Depositions of Brown and Williamson Tobacco Corporation and The American Tobacco Company (CLAD #933)
("May 8 Order"), ordering B&W and American to provide complete, full, and unevasive answers to specific
questions regarding the existence and location of smoking and health research documents and documents
regarding the advertising, marketing, and promotion of cigarettes and, further, ordering B&W and American to
produce the documents so identified;

WHEREAS, on May 19, 1997, B&W and American filed purported "responses" to the questions set forth in the
May 8 Order, challenging, however, the Court's authority to seek information which they described as "beyond the
scope of reasonable inquiry" and "inconsistent with the case management orders governing discovery in this
case;"

WHEREAS, Plaintiffs moved for enforcement of the May 8 Order and for sanctions against American (CLAD
#985-986) on June 3, 1997; B&W as successor by merger to American filed its memorandum in opposition on June
9, 1997 (CLAD #1004); and the matter was heard on June 17, 1997;

WHEREAS, on June 18, 1997, the Court issued its Order for Enforcement of this Court's Order of May 8, 1997,
and Notice of Hearing for Sanctions (CLAD #1033) ("June 18 Order"), finding that B&W and American willfully
violated the Order of this Court, failing to produce the documents or to answer the questions in a complete and
unevasive manner as required by the May 8 Order;

WHEREAS, the Court scheduled a sanctions hearing to take place on June 24, 1997, pursuant to Minn. R. Civ. P.
11, 26.07, and 37.02 and Minn. Stat. § 549.21, giving B&W and American fair notice and yet another opportunity to
comply with the May 8 Order;

WHEREAS, rather than showing a good faith effort to comply with the May 8 and June 18 Orders, B&W sought
relief in the Minnesota Court of Appeals in no fewer than three ways: Petition for Discretionary Review, Notice of
Appeal of the Order of June 18, and Petition for Prohibition and/or Mandamus of the Orders of May 8 and June 18;

WHEREAS, on July 22, 1997, the Minnesota Court of Appeals denied relief of any sort to B&W, flatly stating:
"We are troubled by the numerous requests for interlocutory review of non-dispositive pretrial rulings in this
litigation. . . . [W]e caution counsel that awards [of attorney fees or sanctions] may be made in the future. . . ."
(emphasis added);

WHEREAS, despite the Appellate Court's admonition, B&W petitioned the Minnesota Supreme Court for a Writ
of Prohibition and for its Review;

WHEREAS, on November 13, 1997, the Minnesota Supreme Court denied the petitions filed by B&W for further
appellate review of the May 8 and the June 18 Orders;

WHEREAS, pursuant to the Court's September 4, 1997, Order, the parties were granted the opportunity to file
simultaneous briefs relating to appropriate sanctions, which briefs the parties agreed to file by November 28, 1997
(see CLAD #1737);

WHEREAS, Plaintiffs filed their submissions on November 28, 1997 (CLAD #1753-1755) and B&W filed its
submission December 2, 1997 (CLAD #1768);

WHEREAS, less than ten hours before the scheduled sanctions hearing, B&W filed Supplemental Responses to
the questions set forth in the Court's May 8 Order, which long-awaited "responses" the Court hereby finds to be
incomplete, evasive, and lacking in good faith and due diligence;

WHEREAS, the Court finds American and B&W to remain in willful violation of this Court's May 8 and June 18
Orders;

WHEREAS, the Court finds that B&W and American received repeated sufficient notice that the Plaintiffs were
seeking sanctions and that the court would consider imposing sanctions and, therefore, their argument that they
were denied due process is frivolous;

WHEREAS, the Court finds B&W's argument--that it is impossible for them to obtain documents--highly suspect
and disingenuous considering that, no matter what corporate reorganizations were reported to be in the planning
stages, no one can deny that the entity known as American (which was a subsidiary of American Brands and a
sister subsidiary of Gallaher) was in existence when the Complaint was filed in August of 1994. The sale of
American to B&W (and the alleged transfer of all American documents by American Brands to B&W and the later
legal severance of corporate relationships to American Brands and Gallaher) occurred post-complaint, in
December of 1994. The merger of American with B&W, B&W emerging as successor, did not occur until some
months later, in 1995. The fact that discovery commenced after the sale and merger is irrelevant; the date of
service controls. While Defendants attempt to distinguish Pesaplastic, C.A. v. Cincinnati Milacron Co., 799 F.2d
1510 (11th Cir. 1986) and Minnesota Mining & Mfg. v. Eco Chem., Inc., 757 F.2d 1256 (Fed. Cir. 1985), they offer
distinctions without a difference. These cases held that corporations were able to respond to discovery requests,
despite transfer of assets to other entities. Here B&W claims it is unable to search for documents from American's
parent and sister subsidiaries because of the "legal severance" occasioned by the post-complaint sale. American's
own purposeful actions in an attempt to divest itself of documents and corporate relationships were responsible for

B&W's subsequent alleged inability to comply with discovery requests and the Orders of the Court. Moreover, not
even their own counsel take the "separate entities" argument seriously, as they consistently fail to distinguish
among five of the defendants, for example:

A. Thomas McCormack, Esq., of the firm of Chadbourne & Parke LLP (whose files were
ordered to be searched for responsive documents) has represented himself to the Court as
appearing on behalf of "American" at the hearing held April 15, 1997; on behalf of "BATCo"
at hearings held August 12, November 4, and November 18-20, 1997; and on behalf of
"BATCo/BATUKE" at the hearing held October 14, 1997.

B. John W. Getsinger, Esq., of the firm of Leonard, Street and Deinard has represented
himself to the Court as appearing on behalf of "American" at hearings held March 18, April 8,
August 12, September 9, November 4, and December 9, 1997; on behalf of "B&W as
successor to American" at hearings held June 24, 1997 and November 18, 1997; and on behalf
of "BATCo/BATUKE/American" at the October 14, 1997, hearing.

C. Byron E. Starns, Esq., of the firm of Leonard, Street and Deinard has represented himself
to the Court as appearing on behalf of "American" through hearings held April 15, 1997; on
behalf of "B&W as successor to American" at hearings held June 17 and 24, 1997; on behalf
of "BATCo/BATUKE" at the October 14, 1997, hearing; on behalf of "BATCo" at hearings
held November 4, 18, and 20, 1997; and on behalf of "B&W" at the December 9, 1997,
hearing.

D. Mary T. Yelenick, Esq., of the firm of Chadbourne & Parke LLP has represented herself
to the Court as appearing on behalf of "American", except at the hearings held June 17 and 24,
1997 and November 18, 1997, where she represented herself as appearing on behalf of "B&W
as successor to American", and the December 9, 1997, hearing, where she represented herself

as appearing on behalf of "B&W."

WHEREAS, the Court has the authority and discretion to impose a variety of different sanctions for activity contemptuous of the Court in order that the authority of the judicial system does not continue to be flaunted;

WHEREAS, the Court finds that Plaintiffs have been prejudiced by B&W's and American's blatant disregard for court orders in this matter and the seven-month delay occasioned by B&W's and American's filing of frivolous appeals;

WHEREAS, in light of the joint defense claimed by the defendants in this action, a cooperative history extending more than forty years, the Court suggests the other defendants encourage B&W's and American's compliance with the Orders of this Court, lest their disdainful violations be found to taint all defendants;

WHEREAS, this Court concludes that sanctions are necessary because B&W and American have blatantly disobeyed an Order of the Court, have continued to be contemptuous of such Order, and have challenged the authority of the judicial system, and impugned the integrity of that system;

WHEREAS, the Court determines that such sanctions must be sufficiently harsh to chill any further willful disregard of the judicial system - "to penalize those whose conduct is deemed to warrant a sanction and to deter others who may be tempted to behave in such a way as to warrant the imposition of sanctions in the future";

WHEREAS, in addition to the reasons set forth above, the Court finds that harsh sanctions are required in this matter because even immediate compliance by American and B&W will not cure the prejudice Plaintiffs suffer due to the abuse of discovery; trial in this action will commence on January 20, 1998;

WHEREAS, in order to place the monetary sanctions in appropriate perspective, the Court notes that B.A.T. Industries, p.l.c., as parent company of B&W, earned sales in excess of one (1) billion British pounds and American's successor by merger, B&W, had a domestic operating profit of approximately $880 million in 1996;

THEREFORE, IT IS HEREBY ORDERED:

1. All alleged claims of privilege, whether attorney-client or work product, shall be stricken with respect to
each document set forth in Exhibit 12 to the Affidavit of Gary L. Wilson filed November 28, 1997; and
B&W and American shall produce said documents in their full and unredacted forms directly to Plaintiffs
within ten days. This paragraph shall not apply to documents for which the remaining defendants have
asserted a timely claim of joint defense privilege; B&W and American shall, instead, file a list of the Bates
numbers of such documents, if any.

2. The Supplemental Responses of B&W to the Court's Questions filed on December 8, 1997 (CLAD
#1801) shall be immediately unsealed.

3. B&W and American shall pay the costs and expenses incurred by Plaintiffs, including reasonable
attorneys' fees, to litigate the issue of B&W's and American's discovery abuses, including fees and costs
incurred in connection with (a) proceedings leading to this, the May 8, and the June 18 Orders; (b)
responses to requests for appellate review; and © the taking of depositions of American deponents. To
assist the Court in determining the appropriate amount of this monetary sanction, Plaintiffs shall file their
Affidavit of Costs, Expenses, and Fees within fifteen (15) days of this Order.

4. B&W and American shall immediately pay to the Clerk of Court as a monetary sanction the sum of
One Hundred Thousand and no/100ths Dollars ($100,000.00).

5. Should B&W and American remain in violation of the Court's Orders ten (10) days after filing of this
Order, B&W and American shall pay to the Clerk of Court the sum of One Hundred Thousand and
no/100ths Dollars ($100,000.00) for each day thereafter during which Defendants fail to comply, said
sums to be in addition to the initial monetary sanctions imposed in paragraphs 3 and 4 above. Said amount
shall accrue daily, with interest at the legal rate on any unpaid balance, up to and including January 19,
1998.

6. If B&W and American remain in violation of the Court's Orders, on January 20, 1997, the Court shall re-examine the amount of the monetary sanctions to determine whether additional encouragement is necessary to obtain defendants' compliance.

7. In light of the prejudice to their case incurred by Plaintiffs as a result of B&W's and American's abuses, the Court will impose one or a combination of the following three sanctions or such other sanction/s the Court shall deem just, such sanction/s to be determined by the Court at the time of trial of this action. At that time, the Court will analyze and determine the extent of the prejudice incurred by Plaintiffs by reason of B&W's and American's violations. The Court will take into consideration the actions B&W and American have taken, if any, between the dates of filing of this Order and the time of trial to remedy their continued disregard for the authority of the court and the judicial process.

Option 1: Plaintiffs will be allowed to present to the jury B&W's and American's failure to provide the required information, and the jury will be instructed that they may draw a negative inference from B&W's and American's failure to provide the information ordered produced.

OR

Option 2: The Court will order that Plaintiffs' allegations against American and B&W as successor by merger to American which rest upon the information ordered produced - information about smoking and health research and the advertising, marketing, and promotion of cigarettes (causes of action asserted in paragraphs 84-133 of the Amended Complaint) - are deemed established. American and B&W as successor by merger to American retain the right to assert affirmative defenses to the extent any are otherwise available.

OR

Option 3: The Court will enter default judgment against B&W and American in favor of Plaintiffs.

Dated: December 30, 1997 BY THE COURT:

/s/ Kenneth J. Fitzpatrick

Kenneth J. Fitzpatrick

Judge of District Court