STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

CASE TYPE: Civil Other

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 and 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,

Defendants.

FILE NO. C1-94-8565

ORDER TO COMPEL LIMITED DEPOSITIONS OF MEDICAID RECIPIENTS

The above matter came on before the Honorable Kenneth J. Fitzpatrick on December 5, 1995, upon the duly and properly noticed and scheduled motion of defendants 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 ("defendants") for an order authorizing defendants to depose between ten and twenty individual recipients of Medicaid who

allegedly were treated for "smoking-related" diseases and who are current or former smokers and for an order establishing the procedure for selecting such deponents. Counsel appeared and argued on behalf of plaintiffs and on behalf of defendants. Additional counsel also appeared, but did not argue, on behalf of the parties.

WHEREAS, the plaintiffs and defendants have not come to an agreement with respect to the proposed depositions of selected individuals and therefore seek the Court's determination of these issues; and,

WHEREAS, defendants request clarification of the guidelines for the selection of Medicaid recipients for depositions; and,

WHEREAS, depositions of selected individual recipients of Medicaid who allegedly were treated for "smoking-related" diseases and who are current or former smokers will assist in establishing a factual predicate for decisions by the Court on certain claims and affirmative defenses and will assist in creating a record upon which the parties and the Court may rely in fashioning a plan for appropriate future discovery.

NOW THEREFORE, based on the files, memoranda, arguments, and representations of counsel,

IT IS HEREBY ORDERED:

1. Defendants may take the depositions of at least ten (10) but no more than twenty (20) individual recipients of Medicaid who allegedly were treated or are presently being treated for "smoking-related" diseases and who are current or former smokers. The ten to twenty deponents shall be residents of either Hennepin or Ramsey counties. The authority to proceed with such depositions, however, is specifically limited and shall be conducted pursuant to the Minnesota Rules of Civil Procedure and the guidelines set forth by this court.

2. The depositions shall be taken on the earliest possible dates consistent with the procedures for selecting deponents set out below. No deposition pursuant to this order shall be commenced, however, unless and until the defendants have completed production and deposit of all documents properly requested in plaintiffs' discovery requests made on or before December 5, 1995, and plaintiffs shall have had a reasonable opportunity to review said documents.

3. The plaintiffs shall produce within thirty (30) days of the filing of this order only those portions of the Medicaid Management Information System ("MMIS") data tapes for Fiscal Year 1994 sufficient to allow defendants to readily identify, by recipient identification number, the one hundred (100) Medicaid recipients who had the earliest admission dates to a hospital in the Minneapolis-St. Paul area for treatment of a "smoking-related" disease in Fiscal Year 1994 and who resided in Hennepin or Ramsey Counties.

4. For these one hundred individuals, the MMIS data tapes shall also include at a minimum the following information:

(i) The other diagnosis codes, if any, for the individual;
(ii) The dates of beginning service, ending service, and discharge; and
(iii) The patient's status on the last date of service.

The information produced, however, shall not contain patients' names or addresses.

5. The privacy of each individual shall be protected. Unless otherwise ordered, each such individual shall be identified in documents filed in this matter only by identification number.

6. No party or counsel shall have any contact with any of these one hundred individuals prior to any deposition, except such contact that might occur in the ordinary course of either business or providing Medicaid benefits to an individual. Any information plaintiffs provide to their counsel concerning any of these individuals shall be simultaneously provided to defendants.

7. If plaintiffs cannot identify from their extant data whether these one hundred individuals

are current or former smokers, the treating hospital shall produce simultaneously to counsel for the plaintiffs and defendants that portion of the admitting history for each of the one hundred individuals sufficient to and for the sole purpose of determining each individual's smoking history. Appropriate redactions of patients' names, addresses, and any other identifying information shall be made on the admitting histories, and identical redactions shall be made on the admitting histories provided to counsel for all parties. The parties will review the admitting histories to determine which of the one hundred individuals are current or former smokers.

8. The plaintiffs shall provide the Clerk of Court with the names and last known addresses of those individuals out of the initial group of one hundred who, based on plaintiffs' extant data or the individuals' admitting histories, are determined to be current or former smokers. The Clerk shall send these individuals a one- or two-page form, prepared by defendants with the approval of plaintiffs, inquiring as to each individual's availability for a deposition and willingness to authorize release of medical records.

9. If fewer than ten (10) individuals respond, affirmatively indicating their availability for deposition and willingness to authorize release of medical records, the Clerk shall so inform the parties and the parties shall repeat the procedure outlined above to produce information with respect to the next one hundred Medicaid recipients, until at least ten individuals affirmatively indicate their availability and willingness to authorize release.

10. From the available and willing individuals, the Clerk of Court will randomly select up to twenty, but no fewer than ten, individuals for depositions. The forms completed by the individuals selected for deposition will then be provided to counsel for plaintiffs and defendants.

11. Each individual so selected will be asked to provide a list of his or her health care providers, together with executed authorization(s) sufficient to permit defendants to collect the

individual's medical records prior to deposition. Defendants will provide a copy of the medical records they collect pursuant to these authorizations to plaintiffs at cost as soon thereafter as copies may be made.

12. Defendants may take the deposition of each individual so selected and shall, pursuant to Rule 30.02 of the Minnesota Rules of Procedure, give reasonable notice in writing to all parties at least twenty (20) days prior to the taking of any such deposition.

13. The deposition of each individual selected shall be held in Hennepin or Ramsey County and shall be limited to no more than three (3) hours of examination by defendants collectively and no more than three (3) hours of examination by plaintiffs collectively.

14. At least twenty (20) days prior to the taking of any deposition, the defendants shall deposit with the Clerk of Court sums sufficient to reasonably compensate those individuals deposed for their time and expenses involved in preparing for and the taking of their depositions, as well as any administrative costs of the Court in holding and disbursing such sums. The amount of such compensation shall be proposed by the parties and, absent the parties' agreement, determined by the court. In determining the amount of compensation to be offered to deponents, the parties are advised that the amount shall be no more than that which will reasonably correspond to the deponents' expenditures in time and expense; the amount offered may be sufficient to secure compliance with the deposition process while not encouraging or suggesting an obligation to any party or counsel for any party.

Dated: 12/21/95

/s/ Kenneth J. Fitzpatrick
Kenneth J. Fitzpatrick
CHIEF JUDGE

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