STATE OF MINNESOTA
DISTRICT COURT
COUNTY OF RAMSEY
SECOND JUDICIAL DISTRICT
FILE # C1-94-8565

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 . 1. 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.

ORDER WITH RESPECT TO PARTIES MOTIONS TO COMPEL DISCOVERY AND SCHEDULING MATTERS

Kenneth J. Fitzpatrick
Judge of District Court

The above matter came on for a General Status Conference and hearing on November 12, 1996, before the Honorable Kenneth J. Fitzpatrick. Roberta B. Walburn, Esq., appeared and began arguments on behalf of Plaintiffs. Peter W. Sipkins, Esq., appeared and began arguments on behalf of Defendants. The following also were present and identified themselves as appearing on behalf of the party or parties set forth opposite their names:

Name	*Party*
Michael V. Ciresi	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Roberta B. Wlaburn	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Susan Richard Nelson	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Gary L. Wilson	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Corey L. Gordon	Blue Cross and Blue Shield of Minnesota
Thomas F. Pursell	State of Minnesota
Ann Kinsella	State of Minnesota
Doug Blanke	State of Minnesota
Heather Gould	State of Minnesota
Peter W. Sipkins	Philip Morris Incorporated
Tom Silfen	Philip Morris Incorporated
Mark Helm	Philip Morris Incorporated
Maurice Lieter	Philip Morris Incorporated
Anne Walker	Philip Morris Incorporated
Kelly Klaus	Philip Morris Incorporated
Robert Schwartzbauer	Philip Morris Incorporated
James Simonson	R.J. Reynolds Tobacco Company
Jeffrey Jones	R.J. Reynolds Tobacco Company
Jonathan Redgrave	R.J. Reynolds Tobacco Company
Richard G. Braman	R.J. Reynolds Tobacco Company
Marnard Page	R.J. Reynolds Tobacco Company
Ivan Smith	R.J. Reynolds Tobacco Company
Jack Fribley	Brown and Williamson Tobacco Corp.
Ram Padmanabhan	Brown and Williamson Tobacco Corp.
Patrick D. Bonner, Jr.	B.A.T. Industries, p.l.c.
Dean Thomson	B.A.T. Industries, p.l.c.
John Monica	Lorillard Tobacco Company
David Martin	Lorillard Tobacco Company
Byron Starns	The American Tobacco Company
Steven Kelley	Liggett Group, Inc.
Larry Purdy	The Council for Tobacco Research, U.S.A
George Flynn	The Tobacco Institute, Inc.
Hal Shillingstad	The Tobacco Institute, Inc.

Members of the press also attended and observed the proceedings.

WHEREAS, the parties presented arguments, reports, and representations with respect to the matters as set forth generally in the Proposed Agenda for Hearing of November 12, 1996; Based on the file, record, arguments, and representations of counsel, it appears that the following provisions of this Order are justified and supported by good cause shown

A. STATUS OF LETTER TO MEDICAID RECIPIENTS REGARDING DEPOSITIONS

WHEREAS, in light of this Court's Orders with respect to depositions of certain Medicaid recipients, the parties have met and conferred and agreed to the form of communication and attachments to be mailed to individuals identified and, further, have

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presented the documents to the Clerk for processing and mailing;

WHEREAS, the Court and counsel have expressed concern that fewer than ten individuals may indicate their availability for deposition;

IT IS HEREBY ORDERED that, after the Clerk presents her report to the parties regarding the number of positive responses to the initial communication, the parties shall meet and confer to review and revise the selection process. If fewer than ten individuals have indicated their availability for deposition, the parties shall immediately subpoena the next one hundred records and, after considering any suggestions presented by the Clerk, shall submit to the Court a revised communication to potential deponents.

B. DEFENDANT PHILIP MORRIS INCORPORATED S MOTION FOR EXTENSION OF PARTIAL STAY OF ORDER DATED JUNE 28. 1996

WHEREAS, Defendant Philip Morris Incorporated (Philip Morris) has appealed this Court's Order dated June 28, 1996, and, having been denied relief by the Minnesota Court of Appeals, sought relief from the Minnesota Supreme Court, which relief has also been denied;

IT IS HEREBY ORDERBD that Philip Morris' Motion for Extension of Partial Stay is DENIED. Philip Morris shall immediately produce, if it has not already done so, all documents subject to this Court's Order of June 28, 1996.

C. TRIAL DATE AND PRE-TRIAL SCHEDULING

WHEREAS, the parties have met and conferred in attempts to determine a trial date and scheduling of various pre-trial matters;

WHEREAS, the parties have been unable to reach accord and have presented and argued their proposed schedules;

IT IS HEREBY ORDERED that the following schedule shall be established for the various matters indicated, including date of trial:

December 16, 1996	Deadline for service of document requests.
December 31, 1996	Deadline for production of documents requested on or before March 5, 1996. The parties are cautioned to institute procedures and take those steps necessary (e.g., retaining and training additional personnel) to avoid improper or incorrect production, notations, and any delay in the process of making the documents available for counsel's review.
January 15, 1997	Deadline for production of document discovery.
February 15, 1997-March 15, 1997	Depositions of Medicaid recipients. This amends paragraph 2 of this Court's Order dated October 7, 1996.
March 15, 1997- September 30, 1997	Fact depositions. This amends paragraph 1 of this Court's Order dated October 7, 1996. Paragraph 1 of said Order is further clarified as follows: The word day as used in this paragraph shall be interpreted to mean no more than ten (10) hours of recorded deposition testimony. When calculating said hours, the parties shall use the following as examples of time not to be counted as recorded: time used to voice objections, rulings upon objections, recesses, meal breaks, time off the record, etc. A deposition may continue over more than one calendar day (for each Class B deposition) or two calendar days (for each Class A deposition), as the case may be, provided that the hourly limitation set forth above is not exceeded.
June 2, 1997	Plaintiffs to serve (i) list of experts they intend to call at trial, (ii) full and complete experts reports, and (iii) damages model.
July 1, 1997	Defendants to serve (i) list of experts they intend to call at trial and (ii) full and complete experts reports.
	Expert depositions shall be limited to not more than

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	twelve (12) hours of recorded deposition testimony. When calculating said hours, the parties shall use the following as examples of time not to be counted as recorded: time used to voice objections, rulings upon objections, recesses, meal breaks, time off the record, etc. A deposition may continue over more than one calendar day provided that the hourly limitation set forth above is not exceeded. Failure to provide full and complete expert reports, however, may provide grounds for requesting additional expert deposition time.
August 29, 1997	Deadline for completion of any depositions of Plaintiffs experts.
September 26, 1997	Deadline for completion of any depositions of Defendants experts.
October 31, 1997	Deadline for filing of dispositive motions.
November 25, 1997	Hearing on dispositive motions.
December 29, 1997	Deadline for filing of motions in limine and proposed voir dire; deadline for exchange of witness lists, exhibit lists, and documentary exhibits.
January 12, 1998	Final pretrial conference; deadline for filing of jury instructions, verdict forms, and trial briefs; mark and exchange copies of exhibits.
January 19, 1998	Trial begins.

D. PLAINTIFFS MOTION TO COMPEL REGARDING SETTLEMENT POLICIES. PAYMENT OF ATTORNEYS FEES. INDEMNIFICATION. AND CONTRIBUTION

WHEREAS, the Court finds that Defendants agreements regarding settlement policies, payment of attorneys fees, indemnification, and contribution are relevant to the subject matter of this litigation and that such information appears reasonably calculated to lead to the discovery of admissible evidence;

IT IS HEREBY ORDERED that all Defendants respond to Plaintiffs Requests for Production of Documents Relating to Indemnity and Contribution Agreements, Requests Nos. 1 through 4, within thirty (30) days from the date of this Order, it being understood, however, that Defendants need not produce drafts or other preliminary versions of documents that did not result in any understandings or agreements among or between any of the parties. Defendants shall use good faith efforts and due diligence to produce final versions of any documents referencing or relating to any understandings or agreements among or between any of the parties with respect to indemnification, contribution, and settlement policies.

E. DEFENDANTS MOTION TO COMPEL PRODUCTION OF LEGISLATIVE DOCUMENTS

WHEREAS, the Constitution of the State of Minnesota provides for separation of powers,

WHEREAS, neither the House nor Senate are parties to this action;

WHEREAS, the Plaintiffs have no possession or control of documents of the legislature;

WHEREAS, relevant documents may be available to Defendants as a matter of public record;

IT IS HEREBY ORDERED, that Defendants Motion to Compel Production of Legislative Documents is denied. Plaintiffs, however, shall produce documents responsive to Defendants Document Requests Nos. 18 and 30-36 from Defendants Sixth Request for Production of Documents if such documents are found in the State's executive branch or under its possession, custody, or control.

F. PLAINTIFFS MOTION TO COMPEL PRODUCTION OF DOCUMENTS REGARDING LOBBYING ACTIVITIES

WHEREAS, although Plaintiffs have demonstrated a compelling interest bearing a substantial relation to the information sought, Plaintiffs requests are overbroad;

WHEREAS, Plaintiffs have failed to show that discovery sought represents the least restrictive means for accomplishing Plaintiffs objectives in light of Defendants constitutional rights;

IT IS HEREBY ORDERED that Plaintiffs Motion to Compel Production of Documents Relating to Lobbying Activities is denied at this time.

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G. DEFENDANTS MOTION TO COMPEL PRODUCTION OF GAMBLING DOCUMENTS

WHEREAS, although the information sought appears reasonably calculated to lead to the discovery of admissible evidence, Defendants requests as presented are overbroad;

IT IS HEREBY ORDERED that Defendants Motion to Compel Production of Gambling Documents is denied at this time. The Court will consider, however, some limited discovery in this area provided Defendants present requests which are more narrowly drawn.

DATED: November 27, 1996

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